(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

Crim. Appeal No. 3115 /98

APPELLANT : Narendra Kumar, Aged about 40 years S/o Sukhchand, resident of Village Ganiyari P.S. Bhilai - 3, Distt. Durg, At present in the Central Jail, Raipur (M.P.)

VERSUS

RESPONDENT : State of Madhya Pradesh through Distt. Magistrate, Raipur, Police Station Abhanpur, Distt. Raipur (M.P.)

Criminal Appeal Under Section 374 (2) Code of Criminal Procedure, 1973.

20504

Filed on 26-12-98

by Shri M. Kisarat

Advocate

Pls. A.R.

(37)

HIGH COURT OF CHHATTISGARH AT BILASPUR

D.B. HON'BLE SHRI FAKHRUDDIN AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

Criminal Appeal No. 3115 of 1998

Narendra Kumar

Versus

State of Madhya Pradesh

JUDGEMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI FAKHRUDDIN ,J.

Sd/-
Fakhruddin
Judge
3 /08/2006

POST FOR JUDGMENT ON 9th AUGUST 2006

Sd/-
DHIRENDRA MISHRA
Judge

(38)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM : HON'BLE SHRI FAKHRUDDIN AND HON'BLE SHRI DHIRENDRA MISHRA, JJ.

CRIMINAL APPEAL NO.3115 OF 1998

Appellant : Narendra Kumar

Versus

Respondent : The State of M.P.

Present : Shri Bhisma Kinger, Advocate with Ms. Sunita Jain, counsel for the appellant.
Shri M.P.S. Bhatia, Panel Lawyer for the respondent/State.

JUDGMENT
(Delivered on 4th of August, 2006)

Per Dhirendra Mishra, J. :

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 26th October 1998 passed by learned Sessions Judge, Raipur in Sessions Trial No.493/97, by which the learned Sessions Judge has convicted the appellant under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and pay a fine of Rs.1,500/-, in default of payment of fine to undergo rigorous imprisonment for one month.

2. The charge against the appellant is that on 04.10.1997 he along with his father and wife Kantabai went to the house of the complainant at village Godiyardih. His father returned on the following day at 4.00 p.m. leaving the appellant and his wife in the said village. However, after some time the appellant started assaulting his wife Kantabai with sickle. The incident was witnessed by Mojanbai who raised an alarm. When Tribhuvan reached there he also saw that

the appellant was assaulting the deceased with sickle and when he tried to save Kantabai, he also sustained injuries on his left palm. The report was lodged by Tribhuvan on the same day at about 9.00 p.m. The appellant apart from total denial also took a defence that at the relevant time he was suffering from unsoundness of mind and for that he was undergoing treatment. One defence witness namely Sukhchand, the father of the appellant has also been examined who has stated that his son was suffering from illness and for that he received treatment at Raipur and also at Sector-9 Hospital, Bhilai.

3. Learned counsel for the appellant submits that from perusal of the order sheets and the material available on record it would be evident that before the incident the appellant was treated by a psychiatrist continuously. In order to prove the treatment papers Dr. Sahgal, the treating psychiatrist was cited as a defence witness. Initially summons were directed to be issued for appearance of the said doctor and thereafter when the doctor did not appear before the Court, warrant of arrest was also directed to be issued for procuring his attendance. However, learned trial Court vide order dated 14.10.1998 again directed that the non-bailable warrant be issued against Dr. Sahgal and posted the case for 23.10.1998. On 23.10.1998 on the basis of report of the executing officer that the said defence witness Dr. Sahgal had retired and left Bhilai and his present address could not be stated by anybody, the trial Court closed the defence of the appellant and after hearing the argument posted the matter for judgment on 26.10.1998 and on that date the impugned judgment convicting and sentencing the appellant as above, has been pronounced.

4. It is argued that from the material available on record it is evident that the appellant was suffering from unsoundness of mind and because of this without knowing the consequence of his act he killed his wife without any rhyme or reason. To establish his defence he had filed certain documents such as medical papers. To establish unsoundness of mind Dr. Sahgal under whom the appellant was undergoing treatment, has been cited as defence witness. However, the Court below without making any serious attempt and without affording any opportunity to the defence to lead evidence in this regard, closed his defence in hot haste causing serious prejudice to the defence.

5. On the other hand, learned counsel for the State/respondent supported the impugned judgment of the trial Court.

6. We have heard learned counsel for the respective parties.

7. The arguments advanced by counsel for the appellant are borne out of the record. Statement of the accused was recorded on 27.07.1998 in which he has stated that he would enter into defence. On 13.08.1998 his father Sukhchand was examined as DW-1 and the matter was posted for recording the evidence of the defence witness. On 04.09.1998 photocopies of the treatment papers were filed on behalf of the appellant and an application to summon two witnesses was filed which was allowed on the condition of appellant's depositing Rs.500/. On 10.09.1998 summons were directed to be issued to Dr. Sahgal, the psychiatrist and Dr. S.K.Tiwari. On 19.09.1998 bailable warrant for a sum of Rs. 100/- was directed to be issued for appearance of Dr. Sahgal. When Dr.Sahgal did not appear before the Court even after issuance of bailable warrant, non-bailable warrant was directed to be issued on 29.09.1998 and finally on 23.10.1998 the defence was closed without examining Dr. Sahgal on the ground that he had left Bhilai after his retirement and his new address could not be ascertained.

8. From the evidence available on record and unproved photocopies of the treatment papers, we are of the considered opinion that in the interest of justice examination of Dr. Sahgal as defence witness is necessary and the Court below without affording adequate opportunity to the appellant to lead evidence in his defence, has closed the defence.

9. In the aforesaid circumstances, we set aside the impugned judgment of conviction and sentence passed by the trial Court as the trial Court did not follow the procedure prescribed under Section 233 of the Cr.P.C. The case is thus remanded back to the trial Court with a direction to afford adequate opportunity to the defence for examination of Dr. Sahgal. As the matter is of 1997, we direct the learned Sessions Judge to conclude the trial by examining the defence witness Dr. Sahgal within three months from the date of receipt of this order. In case the presence of the defence witness is not procured without any delay, it will be open for the defence to prove the treatment papers through someone else of the said hospital who is well conversant with the handwriting and signature of

Dr. Sahgal. It will be also open to the defence to lead such other evidence to prove the insanity of the appellant. The Court below after examination of the said witness and hearing the parties shall pass appropriate order in accordance with law.

10. The accused shall remain in custody till the judgment is passed by the trial Court. With the aforesaid observation the appeal stands disposed of.

Sd/-
Fakhruddin
Judge

Sd/-
DHIRENDRA MISHRA
Judge